

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition for Assignment of
an Eligible Telecommunications Carrier to
Provide Service in Unassigned Territory in
Northern Minnesota

ISSUE DATE: January 6, 2000

DOCKET NO. P-999/CP-98-1193

ORDER GRANTING EXTENSION
SUBJECT TO CONDITIONS AND
REQUIRING INTERIM SERVICE

PROCEDURAL HISTORY

On August 14, 1998, the Commission received petitions from people in western Stony River Township and the North Arm of Burntside Lake seeking telephone service; this area was not within any telephone company's service territory. In his September 1 supplemental petition, Ron Brodigan, the petition sponsor, clarified that the petitioners wished the Commission to designate an Eligible Telecommunications Carrier¹ to provide adequate service in the subject area at a rate consistent with that paid by Ely customers.

On April 30, 1999, petitioners filed a letter seeking, among other things, for the Commission to fund a trial in the subject area of an appropriate wireless loop system, such as provided by LandLinx of Conifer, Colorado, using RadioConnect equipment.

On May 17, 1999, the Department of Public Service (now called the Department of Commerce, or the Department) filed comments recommending that GTE be required to develop a proposal, either on its own or in conjunction with an unregulated provider, to offer wireless loop service to the Stony River Township petitioners.

On June 25, 1999, GTE filed reply comments, noting that it does not offer wireless loop service in Minnesota and arguing that it should not be required to do so.

On July 28, 1999, the Commission issued its ORDER REQUIRING GTE TO PROVIDE

¹An Eligible Telecommunications Carrier is a "carrier of last resort" that has an obligation to provide service to any party that has the ability to pay. The term derives from the federal Telecommunications Act of 1996, codified at 47 U.S.C. § 214(e).

SERVICE TO TERRITORY, directing GTE to provide service to the petitioners by December 31, 1999. The Commission gave GTE the discretion to select the appropriate technology for providing the service. The Commission issued a clarifying order on October 6.

On November 17, 1999, Ron Brodigan, on behalf of the petitioning residents, filed comments regarding GTE's lack of progress in providing service. He noted that GTE had advised several petitioners not to expect service before November 15, 2000. Mr. Brodigan asked that GTE be required to provide interim service until the permanent landline service could be obtained.

On November 19, 1999, GTE filed a request for an extension of time to provide service to certain petitioning subscribers. The subscribers filed responses, including various proposals, between November 29 and December 6. GTE filed reply comments on December 3.

On December 21, 1999, the matter came before the Commission. During the hearing, the Department, GTE and the petitioners proposed terms for settling this matter.

FINDINGS AND CONCLUSIONS

I. THE PARTIES' PROPOSED RESOLUTION

At the hearing, the Department, GTE and Ron Brodigan on behalf of the petitioners submitted an agreement, proposing that the Commission approve GTE's extension request subject to conditions which incorporate elements of GTE's initial request for extension, the Department's position, and the comments from the petitioners. The parties' agreement, as submitted at the hearing, is attached to this Order as Attachment 1. The parties' agreement, altered as to form only and reconstructed per their expressed intent, is attached as Attachment 2.

II. ANALYSIS OF AGREEMENT

1. Extension to Provide Wireline Service.

Consistent with GTE's initial request, the settlement would grant GTE an extension to provide landline service to the petitioners. Specifically, it would authorize GTE to delay providing landline service to any petitioner until 90 days after GTE received the necessary permits, or March 2001 at the latest.

The Commission finds this proposal reasonable. Apparently GTE cannot proceed to provide service to some petitioners without obtaining a permit from the Minnesota Department of Natural Resources (DNR), and cannot proceed to provide service to other petitioners without obtaining a permit from the United States Forest Service (USFS). The pace of the permitting process is largely beyond GTE's control. Therefore, GTE has established good cause for the delay. It is also reasonable to make the length of the extension contingent on the completion of the permitting process; the USFS's estimate of providing the necessary permit by November 2000 is merely an estimate. By requiring GTE to seek any further extension if it has not

completed providing wireline service by March 2001, the settlement would establish an automatic mechanism to return the matter to the Commission's attention if it is not resolved in 15 months. The Commission will approve these provisions.

The extension by no means lets GTE off the hook. The settlement would implement one of the petitioners' proposals by having GTE file regular progress reports, and would implement another proposal by providing interim service (discussed further below). And it would implement a third proposal of giving GTE a financial incentive to fulfill its obligations: if GTE is unable to provide landline service within 90 days of receipt of the USFS or DNR permits, affected customers with the wireless local loop service would have their monthly basic service fee eliminated until GTE started providing landline service. These provisions give the Commission confidence that the settlement is responsive to the petitioners' concerns, and that GTE will have ample reason to diligently live up to its obligations.

2. Wireline vs. Wireless

The settlement would mandate that GTE provide wireline service to the petitioning area. The Commission has not heretofore specified what technology GTE must use to serve the petitioners, expressly deferring to GTE in this matter. Wireline and wireless each have their own advantages. GTE had previously expressed its preference to provide wireline service. To the extent that GTE wishes to commit to that choice in this settlement, the Commission will confirm it.

3. Duty to Provide Interim Service

As noted above, the settlement says that GTE would provide service via wireless technology to a defined list of people until such a time as landline service could be provided. The Commission finds this a reasonable proposal, and responsive to the petitioners' concerns.

Apparently, the date GTE will be able to provide landline service is unknowable. As noted above, the pace of the permitting process is largely beyond GTE's control; the USFS's estimate of November 2000 is merely an estimate. And, once GTE has obtained the necessary permits, it proposes to provide service sometime within 90 days. The only certainty seems to be that many petitioners will not receive permanent telephone service until more than a year after the deadline established by this Commission.

The Commission is also mindful of the risks borne by the petitioners in having inadequate connection to emergency services.

The Commission finds it reasonable to seek to ameliorate this uncertain situation by providing the petitioners with some predictable measure of service within some predictable (and short) period. GTE can accomplish that goal by promptly establishing interim service via wireless technology.

Finally, the settlement would direct GTE to seek Commission approval of its choice of wireless

local loop service provider unless GTE were to select LandLinx, or RadioConnect's equipment. The parties have some familiarity with LandLinx and with RadioConnect, and have gained some confidence with those companies. If GTE were to choose to do business with these companies, the Commission would not see the need to review that choice. Therefore, the Commission will approve this provision as well.

1. Price of Interim Service

The settlement says that GTE may charge the recipients of its interim service according to its usual rates that it charges its Ely subscribers for wireline service, including hook-up fees and monthly rates. However, if GTE were unable to provide a customer with wireline service within 90 days of receiving the necessary permit, then the customer could begin receiving telephone service for free until the permanent service were established.

The Commission finds this pricing scheme reasonable as well. Financially, it places the petitioners in the same circumstances as other GTE customers in the Ely exchange. To charge subscribers less would permit them to unduly benefit from the unavoidable challenges GTE faces in providing service. Once GTE has obtained the necessary permit and 90 days have lapsed, however, it becomes reasonable to provide GTE with an increased incentive to complete the work. The fact that GTE agrees to this provision bolsters the Commission's confidence in its reasonableness.

III. COMMISSION ACTION

The Commission finds the proposed settlement reasonable, and will adopt it for the reasons set forth above. The Commission will direct the parties to abide by the terms of their agreement.

ORDER

1. The agreement proposed by the parties (Attachment 1) is accepted, including the incentive provision appearing at the end of the document, which reads:

"If GTE is unable to provide landline service within 90 days of receipt of the USFS or DNR permits, affected customers with the wireless local loop service will have their monthly basic fee reduced to \$0 until the landline service is provided."

A copy of the parties' agreement (Attachments 1 and 2) is attached and incorporated into this Order. Attachment 1 is the document as proposed to the Commission at its December 21, 1999 meeting and entered into the record of this matter marked Exhibit A. Attachment 2 presents the parties' agreement edited as to form only, as indicated by the parties within the text of their Exhibit A (Attachment 1).

2. GTE shall proceed with the provisioning of telephone service to the affected area consistent with the parties' agreement.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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EXHIBIT A

2. Approve GTE's extension request with the following conditions:

- a. GTE must provide landline service to the petitioning area. Until such time as landline service can be provided, GTE must provide a wireless local loop service to
 1. DELETED
 2. any original petitioner or customer listed in Exhibit 2 to GTE's November 19, 1999 filing that GTE has indicated it will serve with landline service that requests the interim service. *INSERT B HERE*. (DELETE: approximately 92 customers although GTE is waiting on DNR permits for 36 of these customers, so the delay may not be as long as for the 56 customers for which GTE is waiting for USFS permits).

The interim service should be installed no later than March 1, 2000. GTE shall only assess the standard \$42 hook up fee (which may not be assessed again when landline service is installed) for providing the wireless local loop service. Recurring monthly rates and other tariff provisions that are the same as for the Ely exchange would apply to the wireless local loop interim service. If GTE proposes to provide the wireless local loop service using a company other than LandLinx or RadioConnect equipment, Commission approval must be obtained.

- b. *INCLUDE THIS IN a.2. ABOVE:* Wireless local loop interim service must be provided to all subscribers for which GTE is seeking an extension, even those subscribers for which GTE is waiting for DNR permit approval, assuming such DNR permits are not obtained and landline service not installed by June 30, 2000.
- c. GTE must provide monthly updates on its progress to provide landline service. Weekly reports on the progress to provide the interim service must also be provided until the interim service is operational. By September 1, 2000, GTE should file comments on its experience with the provision of service using wireless loop technology. The comments should be served on persons on the existing service list. Consumers receiving service should file comments in reply to GTE's filing if there is any disagreement on how well the service is operating. Comments by consumers in agreement with the information submitted by GTE would also be welcome.

- d. GTE's extension request to provide landline service is granted for 90 days from the anticipated November 2000 USFS permit approval date. If an extension beyond March 2001 for installation of landline service is necessary, GTE must submit another extension request.

Optional additional condition if the Commission wants to include an incentive provision:

- c. If GTE is unable to provide landline service within 90 days of receipt of the USFS or DNR permits, affected customers with the wireless local loop service will have their monthly basic service fee reduced to \$0 until the landline service is provided.

Attachment 2

Approve GTE's extension request with the following conditions:

- a. GTE must provide landline service to the petitioning area. Until such time as landline service can be provided, GTE must provide a wireless local loop service to any original petitioner or customer listed in Exhibit 2 to GTE's November 19, 1999 filing that GTE has indicated it will serve with landline service that requests the interim service. Wireless local loop interim service must be provided to all subscribers for which GTE is seeking an extension, even those subscribers for which GTE is waiting for DNR permit approval, assuming such DNR permits are not obtained and landline service not installed by June 30, 2000.
- b. The interim service should be installed no later than March 1, 2000. GTE shall only assess the standard \$42 hook up fee (which may not be assessed again when landline service is installed) for providing the wireless local loop service. Recurring monthly rates and other tariff provisions that are the same as for the Ely exchange would apply to the wireless local loop interim service. If GTE proposes to provide the wireless local loop service using a company other than LandLinx or RadioConnect equipment, Commission approval must be obtained.
- c. GTE must provide monthly updates on its progress to provide landline service. Weekly reports on the progress to provide the interim service must also be provided until the interim service is operational. By September 1, 2000, GTE should file comments on its experience with the provision of service using wireless loop technology. The comments should be served on persons on the existing service list. Consumers receiving service should file comments in reply to GTE's filing if there is any disagreement on how well the service is operating. Comments by consumers in agreement with the information submitted by GTE would also be welcome.
- d. GTE's extension request to provide landline service is granted for 90 days from the anticipated November 2000 USFS permit approval date. If an extension beyond March 2001 for installation of landline service is necessary, GTE must submit another extension request.
- e. If GTE is unable to provide landline service within 90 days of receipt of the USFS or DNR permits, affected customers with the wireless local loop service will have their monthly basic service fee reduced to \$0 until the landline service is provided.